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Attorneys for Debtors and Debtors in
Possession, SCOOBEEZ, SCOOBEEZ GLOBAL,
INC., and SCOOBUR, LLC

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

SCOOBEEZ, et al.¹

Debtors and Debtors in Possession.

Affects:

- ☒ All Debtors
- ☐ Scoobeez, ONLY
- ☐ Scoobeez Global, Inc., ONLY
- ☐ Scoobur LLC, ONLY

Case No. 2:19-bk-14989-WB
Jointly Administered:
2:19-bk-14991-WB; 2:19-bk-14997-WB

Chapter 11

**DEBTORS' NOTICE OF FILING OF
HILLAIR NOTICE OF TERMINATION OF
STALKING HORSE PURCHASE
AGREEMENT**

Hearing:
Date: November 18, 2019
Time: 10:00 a.m.
Place: Courtroom 1375
U.S. Bankruptcy Court
255 East Temple Street
Los Angeles, CA 90012

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: Scoobeez (6339); Scoobeez Global, Inc. (9779); and Scoobur, LLC (0343). The Debtors' address is 3463 Foothill Boulevard, Glendale, California 91214.

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2 **TO THE HONORABLE JULIA BRAND, UNITED STATES BANKRUPTCY JUDGE,**
3 **AND ALL INTERESTED PARTIES:**

4 **PLEASE TAKE NOTICE** of that the Debtors have received from counsel for Hilliar Capital
5 Management, LLC (“Hilliar”) the letter (the “Hillair Termination Letter”), a true and correct copy of
6 which is attached hereto as **Exhibit A**. The Hilliar Termination Letter states that it “shall constitute
7 notice of termination of” the Asset Purchase Agreement dated September 11, 2019 (“APA”), as
8 amended, by and between Hillair and the Debtors.

9
10 DATED: November 13, 2019

FOLEY & LARDNER LLP

11 /s/ Shane J. Moses

12 Shane J. Moses

13 Ashley M. McDow (245114)
14 John A. Simon (admitted Pro Hac Vice)
Shane J. Moses (250533)

15 Attorneys for Debtors SCOOBEEZ, SCOOBEEZ
16 GLOBAL, INC., and SCOOBUR, LLC
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EXHIBIT A

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November 1, 2019

VIA E-MAIL

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Scoobeez Global, Inc.
Attn.: Brian Weiss
Chief Restructuring Officer
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Force Ten Partners, LLC
20341 SW Birch Suite 220
Newport Beach, CA 92660

Re: **Notice of Termination of Asset Purchase Agreement**

Dear: Messrs. Simon, Weiss, Neale, and Fritz and Ms. McDow:

As you know, this office represents Hillair Capital Management LLC (“Hillair”). Reference is made to the Asset Purchase Agreement dated September 11, 2019 (“APA”), as amended, by and between Hillair and the Debtors. This letter shall constitute notice of termination of the APA by Hillair.

Section 9.1(d) of the APA sets forth, as a condition precedent to Closing¹, that no Material Adverse Effect shall have occurred. “Pursuant to the APA, “ ‘Material Adverse Effect’ means any event, change, circumstance or occurrence that, individually or in the aggregate, has

¹ All capitalized terms not defined herein have the meaning ascribed to them in the APA.

had or could reasonably be expected to have or result in (i) a material adverse effect on the business, assets, results of operations or financial condition of Sellers, the Business or the Purchased Assets...”

As you know, Amazon has provided notice of its intent to terminate its agreement(s). As the Amazon contract represents the one and only revenue generating Purchased Asset and is the sole entire basis of the APA and the Debtors’ business, the termination by Amazon constitutes a material and adverse effect on the business and assets to be acquired. As a result, closing condition 9.1(d) of the APA cannot be met.

In addition, the Sellers cannot fulfil its obligations under Section 4.2(d) of the APA which requires Sellers to deliver to Buyer “...all assignments and consents necessary for the assignment of all of Sellers’ rights, title, and interest in any business arrangements with Amazon.com, Inc. and any of its Affiliates.” Further, section 5.13 of the APA, regarding contracts, states that “[t]o Sellers’ Knowledge, Seller is not in breach of or in default under any Purchased Contract, except to the extent such breach or default will be cured as a result of the payment of the applicable Cure Amounts. Each Purchased Contract is, or will be upon the Closing, valid, binding and in full force and effect in accordance with its terms.” As Amazon has given notice of termination of the Amazon contract, which represents a Purchased Contract, the representations in 5.13 cannot be met, further causing closing condition precedents in 9.1 of the APA to fail.

As material closing conditions set forth in Section 9.1 have become incapable of fulfillment, Buyer hereby provides notice of its right to terminate the APA pursuant to Section 4.4(c). Hillair does not waive any rights and the failure to reference any facts or additional provisions of the APA shall not be a waiver of any rights or remedies, all of which are reserved.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Eric Winston', with a long horizontal flourish extending to the right.

Eric Winston

EW

cc: Crystal Nix-Hines
Adam Friedman

09533-00001/11164720.1

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
Foley & Lardner LLP, 555 South Flower Street, Suite 3300, Los Angeles, CA 90072-2411

A true and correct copy of the foregoing document entitled (*specify*):

DEBTORS' NOTICE OF FILING OF HILLAIR NOTICE OF TERMINATION OF STALKING HORSE PURCHASE AGREEMENT

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d);
and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 11/13/2019_____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) 11/13/2019_____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Honorable Julia W. Brand
United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building and Courthouse
255 E. Temple Street, Suite 1382
Los Angeles, CA 90012

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

11/13/2019
Date

Shane J. Moses
Printed Name

/s/ Shane J. Moses
Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

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- **Bradley E Brook** bbrook@bbrooklaw.com, paulo@bbrooklaw.com;brookecfmail@gmail.com
- **Richard W Esterkin** richard.esterkin@morganlewis.com
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